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ABSTRACT

This paper examines what is known about the link between court decisions and changing school discipline practices; proposes a variety of studies to add to knowledge in this area; and contains suggestions on ways that research findings can be used to improve the ongoing legal education of school personnel. The complex nature of some of the Supreme Court education decisions in the late 1960s and early-to-mid 1970s increased the role of legal commentators in exploring and interpreting decisions. The focus on litigation also diverted attention from other educational issues such as exploring the root causes of school unrest. School law materials need to be specialized and tailored to meet the special issues that are common to particular positions. Teachers need to learn the basic principles of school law and learn of the outcomes of controversial cases involving such issues as educational malpractice. Two tables in the appendixes summarize search and seizure and discipline cases in federal courts and state courts of appeal which were decided between 1979 and 1985. (57 references) (MLF)

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Courts and School Policies

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This paper examines what we know about the link between court decisions and changing school discipline practices.[1] There is little research that has directly addressed this question, though the preponderance of academic commentary, as distinct from research findings, suggests that school personnel enforce discipline rules less than they did in earlier times, in part because of the threat that someone will file suit. Because of the lack of research looking at this important question, the paper also proposes a variety of studies to add to our knowledge in this area. The paper's final section contains suggestions on ways that the research findings we do have can be used to improve the ongoing legal education of school personnel.

At the outset, the paper reviews the literature, mostly from the field of political science, that has looked at the impact of education decisions. This literature yields a variety of testable hypotheses useful to contemporary impact researchers and to those debating the appropriate role of courts.

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[1]The author assumes the responsibility for any errors and omissions in this paper. Helpful comments on an earlier draft were received from James A. Rapp, partner in the firm of Hutmacher, Rapp and Ortbal, P.C., Quincy, Illinois; Ivan B. Gluckman, Director of Legal and Governmental Relations Services, National Association of Secondary School Principals; Oliver C. Moles and Amy L. Schwartz, U.S. Department of Education; Perry A. Zirkel, University Professor of Education and Law, Lehigh University; Michael W. Apple, Professor of Curriculum and Instruction, University of Wisconsin-Madison; and Michael R. Olneck, Associate Professor of Educational Policy Studies, University of Wisconsin-Madison. Ann K. Wallace, Education Dean's Office, University
(Footnote Continued)

Traditional Impact Studies.

Research projects studying the impact of U.S. Supreme Court education decisions were conducted in the 1960s. Involving considerable resources, these studies had a methodological complexity not seen in the last ten years. This research offers evidence that the key to changed behavior lies not so much in what court decisions have said as in how they have been interpreted by school personnel.

Local interpretations are derived from legal and education commentators who filter information between courts and education practitioners. To the extent that these intermediaries are overly pessimistic about future court intervention in education, it can be argued that professionals in the schools have become overly cautious when dealing with discipline and other issues. In short, this paper will argue that contemporary researchers should examine the proposition that the contention by some educators that courts have too much to do with schools is, in part, a self-imposed phenomenon.

Little reference is made to these earlier studies in contemporary discussion of the impact of courts on discipline or other education issues. Most of these earlier studies focused on the impact of Supreme Court decisions involving three topics, two involving education: school prayer, school desegregation and the rights of criminal defendants (such as the impact of Miranda v. Arizona[2] on the behavior

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(Footnote Continued)
of Wisconsin-Madison, made helpful editorial suggestions and Claire A. Shaffer, Education Dean's Office, supervised the manuscript preparation.

[2]384 U.S. 436 (1966).

of police and prosecutors). This impact research began with the simple, testable proposition that Supreme Court decisions in these controversial areas might be ignored or evaded. As is often the case with new lines of research, things became much more complicated as social scientists discovered that there were shades of compliance or noncompliance and that many individuals whose behavior was expected to change, such as police officers or principals, had no idea what the Supreme Court actually had said about the matter at hand.

Early impact research quickly determined that numerous variables, such as the nature of the decision and the parties at whom it was directed, affected short-term compliance.[3] Similar to the findings from recent knowledge surveys of school personnel about discipline decisions, the earlier studies found that school personnel had an incomplete understanding of what was required by the school prayer[4] and other Supreme Court education decisions of the 1960s.[5] Compliance with decisions, especially in the short run, was found to depend in large measure on the activities of third-party groups, such as civil liberties associations, which worked to see that distant court

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[3]See Stephen Wasby, The Impact of the United State Supreme Court (Homewood, Ill.: Dorsey Press, 1970) and, generally, Theodore Becker and Malcolm Feeley, eds., The Impact of Supreme Court Decisions (New York: Oxford University Press, 1973).

[4]Engel v. Vitale, 370 U.S. 421 (1962) (school prayer); Abington School District v. Schempp, 374 U.S. 203 (1963) (Bible verses read at the beginning of the school day).

[5]See Kenneth Dolbeare, "The Public Views the Supreme Court," in Herbert Jacob, ed., Law, Politics, and the Federal Courts (Boston: Little, Brown and Company, 1967); Thomas Barth, "Perception and Acceptance of Supreme Court Decisions at the State and Local Levels, 17 Journal of Public Law 308 (1968).

decisions were complied with locally.[6] Such groups also provided a key role in transmitting information about the content of decisions, as few individuals read Supreme Court decisions and fewer still presume to understand their local impact. It was in the 1960s that the role of intermediaries in shaping local responses was first studied.

Researchers found that some administrators who understood the content of decisions decided to avoid changing behavior until told to do so by school boards or until threatened with lawsuits. Others, however, moved to comply with instructions to end school prayer or Bible readings shortly after a Supreme Court ruling. Resistance to or acceptance of the early prayer decisions, for example, was found to be related to geographic region. Dolbeare and Hammond surveyed elementary school teachers and found that, before 1962, 93% of the teachers in the East used morning prayers and 87% used them in the South. Two years after the prayer decision, the figure had fallen to 11% in the East but only to 64% in the South.[7] Resistance or compliance was found to be related to what neighboring school districts did and to individual administrators' respect for the Court as an institution. Researchers hypothesized that resistance to Supreme Court prayer decisions in the South, then, was related to a lower level of respect for the Court and to a pattern of resistance seen in desegregation cases.

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[6] See, for example, Stuart Scheingold, The Politics of Rights (New Haven: Yale University Press, 1974).

[7] Kenneth Dolbeare and Phillip Hammond, The School Prayer Decisions: From Court Policy to Local Practice (Chicago: University of Chicago Press, 1971), p. 32.

Two key variables were found to be helpful in predicting local response to the school prayer decisions, the personal attitudes of school administrators and the role of community elite in deciding how to respond. Frank Sorauf, after studying all 67 cases involving church-state separation decided between 1951 and 1971 in federal and state high courts, found that personal attitudes were the key factor in determining compliance once a school district lost a court decision.[8] Community elites, such as school board members, also played a part in determining whether a school district would comply in places where a school district was not a direct party to the litigation.[9]

The early impact studies, taken as a group, led to a number of findings useful in today's debate on the role of the courts in discipline or other educational practices. Some of these conclusions, which could be hypotheses for further study, are the following:

1. decisions requiring changed behavior in large bureaucracies, such as school systems or police departments, require active support from administrators if compliance is to occur;

2. compliance is easiest to obtain if changed behavior is required of only a few actors in a bureaucracy;

3. state and local school boards and community political elites help determine which court rulings will be followed;

4. local response to a Supreme Court ruling is more likely if a local group demands its implementation;

5. intermediary organizations, such as national teacher unions, associations of school boards, administrators

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[8]Frank Sorauf, The Wall of Separation (Princeton: Princeton University Press, 1976).

[9]See Henry Rodgers, Jr., and Charles Bullock III, Coercion to Compliance (Lexington: D.C. Heath, 1976).

and legal groups, transmit the content of court decisions;

6. information about court decisions often is garbled and confused when it is absorbed at the local level, especially when the message is received by those not having a direct responsibility to comply;

7. the behavior of individuals in large, bureaucratic organizations may change as the result of misperceptions of legal requirements;

8. positive attitudes about the Supreme Court, or courts in general, increase the likelihood of individual compliance while negative attitudes more likely result in resistance;[10]

9. individuals are personally more likely to comply with decisions with which they agree;

10. administrators in large organizations may use the court decisions as the justification for establishing new policies or procedures actually unrelated to the decision;[11]

11. social groups may use a court decision in one area to push for changes in other unrelated areas (e.g., the generally unsuccessful attempt to link desegregation and the suspension of minority students).[12]

Compared to recent education research on the law that has focused on legal knowledge, employing true-false quizzes about the content of court rulings, or mail surveys about perceived court impact, these early impact studies had a methodological richness that far surpasses current efforts. They also were more substantially funded, making

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[10]See William K. Muir, Jr., Prayer in the Public Schools, Law and Attitude Change (Chicago: University of Chicago Press, 1967).

[11]See, for example, Larry Cuban, "Hobson v. Hansen: A Study in Organizational Response," 2 Educational Administration Quarterly 15 (1975).

[12]For an example of this, see David Bennett, "The Impact of Court Ordered Desegregation: A Defendant's View," Schools and the Courts (Eugene: ERIC Clearinghouse on Educational Management, 1979).

possible surveys combined with on-site data acquisition and observations. There was a willingness, as well, to gather data through in-depth case studies in a single location.

It is important to note that more recent research on courts and schools has addressed a larger question untouched in earlier studies -- the cumulative impact of all education cases. In addition, a key issue is now the increased control of school operations by administrative rules and legal decisions, generally, rather than the impact of single cases. It seems apparent, however, that contemporary survey approaches are inadequate to address these larger and more challenging questions. The content of education decisions also has changed.

The Content of Contemporary Education Decisions.

Early impact research focused on simple questions, such as whether defendants were read their rights or whether schools began the day with a prayer. Today, however, we are interested in studying the impact of more complex decisions. Contemporary cases involving religion in the public schools illustrate this point. Early research asked whether or not schools still had Bible readings or prayers. Today's cases involving religion in the schools focus on such issues as holiday observances after-school prayer groups, or invocations before ceremonies. Case law in these areas is still unsettled, with many areas as yet unaddressed by the Supreme Court. Lower-court decisions in these cases, however, still have both a direct and indirect effect on school policies.

Things also become murkier when we consider the impact of such decisions as Tinker v. Des Moines,[13] Wood v. Strickland,[14] or Goss v. Lopez.[15] While Tinker applies to a constitutional right of free expression, the nondisruptive wearing of a protest armband, it is not possible to survey principals with regard to compliance. Tinker, after all, is more than a case about armbands. It established the principle that students do not "shed their constitutional rights at the schoolhouse door." There is a great distance, however, between saying that students have a limited right to free expression in school and determining what the boundaries of that right might be. It is no surprise that one legal commentator referred to Tinker as marking "the emergence of school law as a discipline."[16] Legions of school lawyers and academic professionals have made careers out of advising schools on what a reasonable interpretation of cases like Tinker might be, and in following and reporting on lower court decisions as judges wrestled with the same question.

Likewise, Wood v. Strickland held that school officials may be liable for denying students their constitutional rights, but does not and could not elaborate what those rights might be or what would constitute a "denial." The case was made even more difficult by the

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[13] Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969); see also Bethel v. Fraser, 54 U.S.L.W. 5054 (1986) regarding free speech at a student assembly.

[14] 420 U.S. 308 (1975).

[15] 419 U.S. 563 (1975).

[16] Thomas Flygare, "Is Tinker Dead?," 68 Kappan 2 (October 1986), p. 165.

conclusion that school officials would be liable for damages for the denial of constitutional rights, even if they "should have known" those rights but did not. It is helpful to remember that the earlier studies on impact found that compliance was most likely if a court directive spoke clearly about intended behavior.

A number of important Supreme Court education decisions in the 1970s, then, created constitutional rights without offering clear signals as to how those rights might be defined or where the Supreme Court was leading. This opens up a question only touched on in contemporary research. "Legal uncertainty," and its impact on school operations, remains a fruitful topic. One study, for example, found that teachers felt they engaged in less discipline of students than they used to because they thought that courts had gone farther in advancing student rights than was actually the case.[17] As cases become more complicated, the role of school law "experts" in offering case law interpretations became more important.

The Role of Commentators in Determining Local Behavior.

Following Tinker, Wood and Goss, there was no shortage of commentators, either to make predictions about where the courts might go, or to decry the unhappy state of affairs that necessitated the speculation in the first place. This created a new impact research question, the effect of legal commentators on the behavior of school personnel.

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[17]Henry Lufler, "Unintended Impact of Supreme Court School Discipline Decisions," M. A. McGhehey, ed., Contemporary Legal Issues in Education (Topeka: National Organization on Legal Problems of Education, 1979).

Commentators not only write about a particular decision but, using crystal balls of varying clarity, also predict future decisions based on the case they describe. Thus, they are the source of much changed behavior in schools. Following the companion decisions in Wood, involving school expulsion without a hearing, and Goss, the case that established that students had a right to hear why they were being suspended from school, even for short durations, and that they had the right to offer their side of the story before suspension, commentators writing about the decisions offered dire forecasts about where the Court might be headed. Because Goss required a hearing before suspension, however skeletal the due process requirement was, commentators expressed concern that the right to a hearing might be extended to other forms of discipline or that other administrator decisions might someday require a hearing.

Writers in legal publications further suggested that cases like Goss extended minimal rights without affording real individual protection and were an unnecessary intrusion into the operation of educational institutions.[18] In a similar vein, courts were seen as an ineffective vehicle for bringing about social change in large-scale social organizations, such as schools.[19] It was even argued that courts had a finite amount of public acceptance and that the ability of courts to bring about social change was limited. Under this theory,

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[18]See, for example, J. Harvey Wilkinson III, "Goss v. Lopez: The Supreme Court as School Superintendent," P. Kurland, ed., 1975 Supreme Court Review (Chicago: University of Chicago Press, 1976).

[19]Donald Horowitz, The Courts and Social Policies (Washington: The Brookings Institution, 1977).

courts have political capital that must be expended carefully.[20] Finally, some wrote about what future cases might look like if the holdings in Goss or other cases were extended to other school practices.[21]

Educators writing in publications distributed to administrators and teachers also wrote about these decisions. They generally adopted the philosophical perspective that the courts had gone too far in regulating the in-school behavior of education professionals. They also argued that the courts were likely to go farther.[22]

While many commentators had predicted that Goss and similar cases would open a floodgate of litigation, leading to a further intrusion into school administration, a strong case can be made for the proposition that this did not, in fact, occur. A number of post-Goss cases involving due process were heard by lower courts, but these resulted in

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[20]See, generally, the arguments in Fred Graham, The Self-Inflicted Wound (New York: Macmillan, 1970).

[21]David Kirp, "Proceduralism and Bureaucracy: Due Process in the School Setting, 28 Stanford Law Review 841 (1976); Mark Yudof, "Procedural Fairness and Substantive Justice: Due Process, Bureaucracy, and the Public Schools," Jane Newitt, ed., Future Trends in Education Policy (Lexington: D.C. Heath, 1979); William Hazard, "The Law and Schooling: Some Observations and Questions," 8 Education and Urban Society 433 (1976).

[22]See, for example, M. Chester Nolte, "The Supreme Court's New Rules for Due Process and How (Somehow) Schools Must Make Them Work," American School Board Journal, March, 1975, p. 47. Nolte followed this piece with "How to Survive the Supreme Court's Momentous New Strictures on School People," American School Board Journal, May, 1975, p. 51. See also W. Richard Brothers, "Procedural Due Process: What Is It?," NASSP Bulletin, March, 1975, p. 1.

most instances in rulings favoring no expansion of hearing rights.[23] In addition, the Supreme Court itself limited Goss by ruling that only nominal damages would be available to suspended students who had not received a hearing, absent any proof of actual injury.[24] Likewise, the Court ruled that corporal punishment, even in a case where injury had resulted, was neither cruel and unusual punishment in violation of the eighth amendment, nor was a hearing of any sort required before its imposition.[25]

The word about decisions that regulate school administrator autonomy, however, seemed to travel more quickly than information about cases that did not. In general the alarmist arguments about an over-aggressive judiciary, common in the 1970s, received greater attention at national school conventions and in the popular press than the news about decisions that supported school personnel. More recently, however, there have been some exceptions to this observation, with pieces having this positive theme appearing in popular publications.[26]

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[23] See the analysis in Henry Lufler, Jr., "Past Court Cases and Future School Discipline," 14 Education and Urban Society 2 (1982), pp. 175-77.

[24] Carey v. Piphus, 435 U.S. 247 (1978). See also Smalling v. Epperson, 438 U.S. 948 (1978).

[25] Ingraham v. Wright, 430 U.S. 651 (1977).

[26] Julius Menacker, "The Courts Are Not Killing Our Children," 67 Public Interest 131 (Spring 1982); Ivan Gluckman and Perry Zirkel, "It's the Law: Is the Proverbial Pendulum Swinging?," NASSP Bulletin (September, 1983); Larry Bartlett, "Legal Responsibilities of Students: Study Shows School Officials Also Win Court Decisions," NASSP Bulletin (March, 1985).

The nature of some of the Supreme Court education decisions in the late 1960s and early-to-mid 1970s, then, led to two related phenomena. First, the role of legal commentators in exploring and interpreting complex decisions became more crucial. For better or worse, commentators began to suggest where the courts were headed, often offering disquieting predictions. Second, from a research perspective, it became more difficult to conduct judicial impact studies because the content of the decisions precluded the simple compliance study methodology used in earlier research.

There is also a sense in which the focus on litigation diverted attention from other educational issues, such as the question of the effectiveness of teaching methods or debate over needed reforms. In the area of discipline, talk of judicial intrusion inhibited the discussion of the root cases of school unrest, reducing attention to the more positive strategies that schools might employ to deal with the issue. For example, there was a lack of debate on how schools can use conflict resolution strategies to reduce problems.[27] There was also inadequate attention on the extent that the organizational structure of schools encourages disorder and how this structure can be altered.[28] For example, the key role of the principal in changing a school's discipline atmosphere was found in one study to be effective in

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[27] See, for example, Alfred Alschuler, School Discipline: A Socially Literate Solution (New York: McGraw-Hill, 1980) and John DeCecco and Arlene Richards, Growing Pains: The Uses of School Conflict (New York: Aberdeen Press, 1974).

[28] Denise Gottfredson, "Environmental Change Strategies to Prevent School Disruption," paper presented at the meeting of the American Psychological Association (Toronto, August, 1984).

overcoming feelings of staff powerlessness brought on by fear of lawsuits and other causes.[29]

The "Litigation Explosion".

At the same time that writers were discussing the increased number of court cases directed at the public schools, there was a general discussion in the popular and academic press concerning the "litigation explosion" that was occurring in all areas of the law.[30] It was argued that many aspects of our society were moving toward overregulation by the judiciary,[31] and that the use of the courts to resolve dispute threatened traditional modes of political and social discourse. Both Time, in 1963, and Newsweek, in 1973, established "Law" feature sections, and the filing of cases involving such issues as educational malpractice, and even "malparenting," was popularly reported.

While the discussion of unusual education cases proceeded in the popular press, school lawyers and administrators meeting in conventions also discussed such cases as a challenge to National Honor Society selection practices, attempts by students to secure advanced places in the school band, and other litigation with unusual fact situations.

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[29]See Ellen Jane Hollingsworth, Henry Lufler, Jr., and William Clune III, School Discipline: Order and Autonomy (New York: Praeger, 1984), especially Chapter 5; see also, generally, "Classroom Discipline," testimony before the Senate Subcommittee on Education, Arts and Humanities, Senate Hearing 98-820 (Washington: U.S. Government Printing Office, 1984).

[30]Michael Fleming, "Court Survival in the Litigation Explosion," 54 Judicature 109 (1970).

[31]Nathan Glazer, "Towards an Imperial Judiciary," 41 The Public Interest 104 (1975).

Professional education groups began offering liability insurance to their members, further contributing to the feeling that lawsuits were an immediate threat to educational professionals.

Thus, the word about unusual education cases traveled quickly. What traveled less quickly, especially in popular publications, was information on final outcomes. That the plaintiffs in these cases invariably were unsuccessful was less well publicized than that the cases were filed in the first place.

What also went largely unchallenged during this debate was the assumption that increased litigation was a permanent state of affairs. One critic of the litigation "explosion" literature observed, "Appearing in prominent law reviews, publications in which, notwithstanding their prestige, there is no scrutiny for substantive, as opposed to formal accuracy, these polemics were quickly taken as authority for what they asserted."[32] At the very least, the contours of increasing litigation needed to be studied.

While the number of lawyers as a proportion of the population has increased, leading to the suggestion that they must be doing something to advance their practice, it is less clear that the increasing number of attorneys had resulted in a proportional increase in litigation.[33]

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[32]Marc Galanter, "Reading the Landscape of Disputes: What We Know and Don't Know (And Think We Know) About Our Allegedly Contentious and Litigious Society," 31 UCLA Law Review 4, 62 (1983).

[33]The number of attorneys doubled in number in the United States between 1960 and 1980. See David Clark, "Adjudication to Administration: A Statistical Analysis of Federal District Courts in the Twentieth Century," 55 Southern California Law Review 65, 94 (1981).

The number of court cases filed per thousand people has increased only in some jurisdictions, including federal district courts, but the number going to trial per cases filed actually has diminished.[34] Increasingly it has become apparent that lawyers are being used to further "supervised bargaining" rather than because an actual resolution by a trial decision was anticipated.[35]

It is unlikely that these fine points about the use of attorneys were or are apparent to school personnel. School officials increasingly reported spending time worrying about litigation and reading about the increased likelihood of legal challenge. Threats of lawsuit, often by parents having little understanding of the probability of prevailing with such challenges, combined with uncertainty about the actual content of education decisions to make life more complicated for school teachers and administrators. School law knowledge surveys, conducted in the 1970s, addressed the issue of legal knowledge. The surveys, however, less frequently addressed the consequences of a lack of knowledge or of the fear of litigation.

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[34]Joel Grossman and Austin Sarat, "Litigation in the Federal Courts: A Comparative Perspective," 9 Law and Society Review 321, 325 (1975).

[35]See, for example, Richard Lampert, "Exploring Changes in the 'Dispute Settlement Function' of Trial Courts," 13 Law and Society Review 91 (1978). For encouragement to use informal dispute resolution rather than lawsuits, see Perry A. Zirkel, "The Minor Suit Award," 66 Phi Delta Kappan 8, 576 (April, 1985).

Surveys on School Law Knowledge.

Early research on the impact of courts found that the public did not have a particularly clear understanding of the areas in which the Supreme Court had rendered major decisions.[36] Perry Zirkel, the leader of the survey movement in the 1970s, found a low level of awareness with regard to the content of major education court cases.[37] Of the 20 questions he asked concerning Supreme Court decisions, the average teacher respondent answered 10 correctly.

Other research, conducted in 1977, found that more than half of the teachers in six Wisconsin schools believed that students had more rights than courts actually had conveyed. For example, 53% of those surveyed believed that students had the right to legal counsel before being suspended. It is not surprising, therefore, that 45% of the teachers thought that "too much interference from courts" was an important cause of discipline problems.[38] Likewise, the same study found that the students responsible for most of the schools' discipline problems, the 10% of the student body responsible for 90% of the rule

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[36]See John Kessel, "Public Perception of the Supreme Court," 10 Midwest Journal of Political Science 167 (1966).

[37]Perry Zirkel, "A Checklist Based on Supreme Court Decisions Affecting Education," 7 School Law Journal 2 (1977); findings reported in "A Test on Supreme Court Decisions Affecting Education," 59 Kappan 521 (1978).

[38]Hollingsworth, Lufler and Clune, supra, pp. 124-25. Disagreement on the role of the courts in school cases reflects the philosophical positions of teachers on the basic question of student rights. For a discussion of such differences among counselors and administrators, see James Schwab, "The Perceptions of Pennsylvania Principals and Counselors on the Issue of Student Rights," unpublished Ph.D. dissertation, Walden University, 1979.

infractions, also believed that the courts had gone further in protecting them than was actually the case.

A study of 125 Chicago area school teachers, published in 1984, found that having had a school law course increased correct response percentages, but that significant percentages of respondents did not know the provisions of state law and the basic elements of court decisions.[39] In another questionnaire study concerning 10 Supreme Court decisions, researchers found that administrators generally were better informed than teachers, but that the results for both groups were "disappointing."[40]

A much more involved "Survey of Children's Legal Rights" was administered to university sophomores, seniors and practicing teachers. The authors found that "teachers and education students alike appear to have only a limited knowledge of children's legal rights."[41] The respondents did better in some areas (exclusionary discipline, juvenile criminal rights and school attendance) and less well in others (child abuse, special education and corporal punishment). It is important to note that teachers did better in understanding the law in areas where they might be expected to have more personal responsibility and less well in areas where administrators or specialized education personnel, such as counselors, might be expected to take the lead. A failure to

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[39]Earl Ogletree and Willie Garrett, "Teachers' Knowledge of School Law," 6 Chicago Principals Reporter (Spring 1984).

[40]Julius Menacker and Ernest Pascorella, "How Aware Are Educators of Supreme Court Decisions That Affect Them," 64 Kappan 424 (1983).

[41]Lynn Sametz and Caven Mcloughlin, Educators, Children and the Law (Springfield, Ill.: Charles C. Thomas, 1985).

match case content with typical job responsibilities is a shortcoming of all this survey research.

Research conducted in 15 Indiana high schools in 1981 found that 71% of the principals, but only 30% of teachers and counselors, were able to list all the rights granted to students in short suspensions.[42] As might be expected, principals were also much more informed about expulsion cases, as they were more likely to have firsthand experience of them. About two-thirds of the teachers and administrators felt that procedural rules governing discipline imposed restraints on their actions.[43]

The most recent and broad-based of this research involved a stratified national survey of 900 junior and senior high school administrators. It was conducted by the Center for Education Statistics in 1985 and addressed the question of compliance with the Goss decision presuspension hearing requirement, among other issues. The survey revealed that almost all schools (more than 99%) followed the procedures. Many schools went further, allowing parents to attend a hearing if the charges were denied (88%), by providing an appeal process (95%) or by allowing some questioning of witnesses (73%). Only

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[42] Susan Hillman, "Knowledge of Legally Sanctioned Discipline Procedures by School Personnel," paper presented at the Annual Meeting of the American Educational Research Association (Chicago, 1985).

[43] Lee Teitelbaum, "School Discipline Procedures: Some Empirical Findings and Some Theoretical Questions," 58 Indiana Law Journal 4, 561 (1983).

three percent of the respondents thought that the Goss hearing requirement placed a significant burden on schools.[44]

In a companion report on the same survey, "teacher fear of being sued" was reported by fewer than 10% of the administrators to be a significant factor in limiting the school's ability to maintain order.[45] This suggests that fear of litigation may have been overstated as a source of changed teacher behavior or that "change" in discipline practices should be made a research hypothesis.

Needed Research.

Recent knowledge surveys of school personnel still show some uncertainty among respondents with regard to the holdings of key court cases. Not all these surveys, however, have used specialized questions for teachers, administrators and counselors. There is no reason why a knowledge of the same legal areas, however, should be expected from each group. Likewise, there has been no stratification of survey questions based on the grade level of teachers.

The legal issues that arise in secondary schools are significantly different from those present when children are in the early grades.[46]

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[44]"School Discipline Policies and Practices," Center for Statistics, OERI, U.S. Department of Education (CS 86-226b), September, 1986. See also Douglas Wright and Oliver Moles, "Legal Issues in Educational Order: Principals' Perceptions of School Discipline Policies and Practices," paper presented at the Annual Conference of the American Educational Research Association, 1985.

[45]"Discipline in Public Secondary Schools," Center for Statistics, OERI, U.S. Department of Education (CS 86-224b), September, 1986.

[46]See, generally, Hillary Rodham, "Children Under the Law," 43 Harvard Educational Review 4 (1973).

Not only have elementary schools been ignored, generally, in the research on the impact of courts on schools, but also the educational materials on the law have been written with secondary schools in mind.[47] We do not know, however, whether elementary school teachers have the same level of concern about lawsuits and their personal rights as secondary teachers. Unresearched changes also may have occurred in the way elementary teachers use discipline as a result of this concern.

A research project involving teacher surveys, stratified by grade level, could be conducted at relatively low cost.[48] Beyond questions related to substantive legal knowledge, such a survey also could begin to probe the question of the origins of legal understanding. In designing new forms of legal information for teachers, whether in-service programs, courses or written materials, it would be useful to know how teachers currently acquire information. Information may also be acquired in different ways, depending on the subject area. Some areas may have a higher salience for teachers based on their personal situation.

This paper has discussed the role of "intermediaries" at several different points. Our understanding of the transmission of legal knowledge, however, is very incomplete. We need to know, for example, how administrators receive legal information, both in the general

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[47]For a bibliography source focusing on both elementary and secondary teachers, see Perry A. Zirkel, "Educational Research Relating to School Law: Educators' Knowledge of School Law," 20 NOLPE Notes 7, 3 (July, 1985).

[48]The U.S. Department of Education, Center for Education Statistics, will conduct a useful national teacher survey addressing some of these concerns early in 1987.

sense, such as what they read or study, and in more specific cases, such as how they relate to their school district's legal counsel. Almost nothing is known about the frequency of such contacts, the content, the extent to which the counsel is more risk adverse or more assertive than the administrator, and the effectiveness of various forms of client-attorney relationships in reducing the overall cost of litigation. We also need to develop theories to guide this research,[49] as there is little research on attorney-client relationships, generally.[50]

Similarly, we have little knowledge of the actual contours of litigation in school districts. In general, we can imagine a variety of legal system contacts, starting with "threats" of lawsuit, often hollow and without substance, to more serious cases where some injury to a student has occurred. As was discussed, lawyers more frequently "bargain" then press for formal decisions. In fact, the number of formal, written opinions in the case law areas discussed in this paper is quite low.[51] We also know that school systems are the more frequent "winners" in published cases.[52] But we know nothing about the litigation "iceberg" below the published opinions -- the number of cases threatened, settled out of court or dropped.

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[49]See, generally, Mark Yudof, "Educational Research Relating to School Law: An Appraisal," 21 NOLPE Notes 7 (July, 1986).

[50]See Austin Sarat and William L. F. Felstiner, "Law and Strategy in the Divorce Lawyer's Office," 20 Law and Society Review 1, 93 (1986).

[51]See Appendix "A" attached to this paper.

[52]See Appendix "B" attached to this paper.

Research in a few selected school districts, using records and data generated contemporaneously, could begin to address the actual boundaries of public school disputes. It would be useful at the outset to distinguish among types of cases in such research: injury-based tort cases, probably the largest group; issues regarding handicapped students, arising either out of the federal Education for All Handicapped Children Act or related state laws; cases asserting federal or state constitutional rights, usually involving Title 42, §1983 of the U.S. Code; and employment cases.

It also is important to focus on case outcomes, with special attention to the cases settled. We do not know, for example, how many cases are compromised as a function of case type. At the very least, it would be useful to discover how many cases a school district settles just to avoid litigation where the facts suggest the district would prevail.

New research should also consider a return to the hypotheses and the methods of earlier impact studies, as detailed previously.[53] A number of subject areas could be used for this intensive, community-based research. The impact of school discipline procedural requirements is an obvious possibility.[54] Such a study could examine

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[53] NOLPE Notes, published by the National Organization on Legal Problems of Education, has featured a series of articles on impact research that are helpful in setting this research agenda. See, for example, Elizabeth Quigley, Anne C. Redding and Perry A. Zirkel, "Empirical Research Relating to School Law: Impact Studies in Special Education," 21 NOLPE Notes 6, 2 (June, 1986).

[54] For background on this topic, see David Schimmel and Richard Williams, "Does Due Process Interfere With School Discipline," The High School Journal (Dec./Jan., 1985), 47.

intensively the link between court decisions and teachers who report they engage in less discipline. A number of conflicting hypotheses related to the decline in discipline are present: 1) teachers discipline less because they know the law in this area and find it to be an impediment; 2) teachers don't know the law and imagine, incorrectly, that courts have limited their power to control discipline; 3) failure to discipline because of legal threat is an alibi allowing teachers to reduce their level of involvement in an activity they didn't like anyway; 4) there really has been no significant change in the way teachers discipline students, but only a change in what people have written about the subject; or 5) there's been a change, but it has nothing to do with subsequent increases or decreases in student misbehavior.

It would also be possible to do a before-and-after impact study of some new law or court decision in a particular jurisdiction. It would be useful to focus on a particular school group, such as teachers or administrators, in such a study. As with the litigation study just proposed, substantial funds would be needed because an in-depth study in the field would be needed. Some flexibility also would be needed to focus on a recently decided case because research would need to start quickly. A new avenue of school law, such as the right of students to a safe educational environment, might also be the focus of research.[55]

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[55]Perhaps an act such as California Proposition 8. See Kimberly Sawyer, "The Right to Safe Schools: A Newly Recognized Inalienable Right," 14 Pacific Law Journal 4 (1983).

Whatever the subject area, further large-scale research on school discipline and the law would be helpful. This is an area where there has been much national concern and much written that makes major assumptions about linkages among the courts, schools and individual behavior. It is also an area where there has been almost no social science research.

Changes to Improve Disciplinary Climates.

This paper argues that the existence of an "explosion of litigation" should be rendered a research hypothesis rather than accepted as fact. It has also suggested that we don't really know whether teachers or administrators have changed their behavior regarding enforcement of school discipline rules and, if they have, if this change can be attributed to court activity. However, regardless of one's positions on these issues, or the outcome of future research, there should be agreement on the need for additional exposure to school law issues for all school personnel.

School law materials need to be specialized. Doctors are not specialists in every major medical issue; likewise we should not expect teachers to know or be interested in all areas of school law. Materials especially need to be tailored to meet the special issues that are common to particular positions, such as superintendents, principals, counselors or special education teachers. The development of appropriate materials has proceeded furthest for principals.

At the same time, there is too often the assumption among teachers that knowledge of school law is "someone else's job." This assumption contains an element of truth, insofar as administrators have the major

responsibility for handling difficult cases. But teachers cannot ignore the fact that a significant percentage of lawsuits involve staff members. This means that teachers should not be able to avoid learning basic principles of school law. Likewise, public school students would benefit from a similar discussion, perhaps in the context of a social studies class. To the extent that students have a greatly exaggerated sense of their legal rights, such instruction can reduce disorder.

While there are a large number of education law texts, some written for teachers, almost no study has been undertaken of which courses of instruction or approaches are most effective. We also do not know the extent to which disorder is reduced in a school where both students and teachers have been exposed to legal issues, though such projects recently were funded by the U.S. Office of Juvenile Justice and Delinquency Prevention.

While there are other steps a school can take to reduce disorder, remaining outside the purview of this paper, there is one final perspective on legal education worthy of note. It is necessary that school personnel learn of the outcomes of controversial cases involving such issues as educational malpractice. The dismissed case never receives attention like the big settlement or the preliminary outrageous demand. This is due, in large measure, to the fact that legal scholars read published opinions to write their columns. Some dismissed cases, of course, are accompanied by formal decisions. This also means, then, that popular educational publications should make a systematic effort to report the cases where the plaintiff's request is held to have no merit.

APPENDIX A

Federal Courts and State Courts
of Appeal Cases Reported
1979-85

Search and Seizure and Discipline

	Year Decided						
	1979	1980	1981	1982	1983	1984	1985
Search and Seizure							
Sniff Dogs	1	0	2	1	1	0	0
Strip Searches	2	0	0	0	3	1	0
Lockers and Cars	1	0	0	1	1	0	0
Possession Searches	1	1	1	4	4	2	4
Total	5	1	3	6	9	3	4
Discipline							
Expulsion Due Process	2	1	5	8	1	4	6
Substantive Rule Issue	1	3	2	2	2	0	2
Grade Reduction	0	0	0	0	2	2	0
Suspension Due Process	4	1	0	3	2	4	2
Discipline of Handicapped	5	0	2	3	1	1	2
Corporal Punishment	4	4	1	1	0	3	2
Total	16	9	10	17	8	14	14

Source: "Pupils" Chapter, Yearbook of School Law, published annually by the National Organization of Legal Problems in Education (Topeka, Kansas).

APPENDIX B

Prevailing Parties
Search and Seizure and School Discipline Cases
1979-85

Federal Courts and State Courts of Appeal

	School District Prevails	Plaintiff Prevails	Remanded
Search and Seizure			
Sniff Dogs	4	1	0
Strip Searches	2	4	0
Lockers and Cars	2	1	0
Possession Searches	12	5	0
Total	20 (64.5%)	11 (35.5%)	0
Discipline			
Expulsion Due Process	15	8	4
Substantive Rule Issue	9	2	1
Grade Reduction	3	1	0
Suspension Due Process	13	3	0
Discipline of Handicapped	6	6	2
Corporal Punishment	9	5	1
Total	55 (62.5%)	25 (28.4%)	8 (9.1%)

Source: "Pupils" Chapter, Yearbook of School Law, published annually by the National Organization on Legal Problems in Education (Topeka, Kansas).

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